

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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JUL 17 1992

In the Matter of

Policies and Rules for
Licensing Fallow 800 MHz
Specialized Mobile Radio
Spectrum Through a Competitive
Bidding Process

RM - 7985

Federal Communications Commission
Office of the Secretary

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JUL 17 1992

To: The Commission

Federal Communications Commission
Office of the Secretary

OPPOSITION TO PETITION FOR RULEMAKING

The Utilities Telecommunications Council (UTC) submits its comments in opposition to the April 22, 1992 Petition For Rulemaking (Petition) filed with the Federal Communications Commission (FCC) by Fleet Call, Inc. (Fleet Call). Fleet Call's Petition requests the FCC to obtain Congressional authority to auction blocks of vacant 800 MHz Specialized Mobile Radio (SMR) spectrum, with the intent of promoting the development of a seamless nationwide digital SMR network.

UTC is the national representative on communications matters for the nation's electric, gas, water and steam utilities. Approximately 2,000 utilities are members of UTC, ranging in size from large combination electric-gas-water utilities which serve millions of customers to the smaller, rural electric cooperatives and water districts which serve only a few thousand customers each. All utilities depend upon reliable and secure communication facilities to help carry out their public service obligations. Many utilities operate on the 800 MHz channels allocated to the

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Industrial/Land Transportation Radio Services, which effectively share spectrum with the Specialized Mobile Radio Service through limited intercategory sharing rules. UTC is therefore interested in any rule changes that would alter utilities' ability to secure spectrum for private, internal communications systems or which would alter the means by which the Commission selects licensees. UTC's opposition to Fleet Call's proposal is set forth below.

Fleet Call notes that in a number of major markets and in most smaller markets, there are a large number of 800 MHz SMR channels that have never been licensed in the ten years since they were allocated. Fleet Call suggests that the FCC designate large blocks of this unused 800 MHz spectrum as "innovator blocks" of spectrum, to encourage entrepreneurs to build digital SMR systems. The "innovator blocks," which Fleet Call prefers be composed of 105 channels, would be designated within geographic areas "mirroring" the Metropolitan Statistical Areas (MSAs) and Rural Service Areas (RSAs) used in the cellular licensing scheme. These geographic areas would not be in the established waiting list areas for SMR frequencies. The licensees of the innovator blocks would then presumably affiliate with SMR digital systems in larger markets so as to create a seamless digital SMR network.

According to the Petition, entrepreneurs must be able to obtain a large number of exclusive use channels to justify high digital system costs. Fleet Call states that a block of 105

channels is sufficient to interest the type of investors necessary for advanced digital SMR systems. The Petition also notes that areas with at least 42 vacant 800 MHz channels would at least permit a level of frequency reuse and would interest investors. Fleet Call states that entrepreneurs are ready to participate in auctions for the exclusive assignment of these blocks.

UTC opposes: (1) Fleet Call's proposed changes in the FCC's rules to create innovator blocks of spectrum to encourage investors in digital SMR technology; and (2) Fleet Call's request that the FCC obtain Congressional auction authority to open the frequency blocks for competitive bidding. For the reasons outlined below, the FCC should deny Fleet Call's Petition.

Rule Changes To Encourage Investment
In Digital SMR Would Be Inefficient Use of Spectrum

Fleet Call does not provide sufficient justification for its proposed regulatory restructuring to encourage investment in digital SMR technology, and adoption of its proposal would be an inefficient use of the spectrum. The frequencies targeted by Fleet Call's proposal have been vacant for many years, as Fleet Call itself repeatedly notes. Most of the frequencies appear to be in smaller to moderate sized areas. It is apparent that the commercial mobile radio needs of these communities are already well-served. There is no evidence that the massive changes to the SMR regulatory structure proposed by Fleet Call will stimulate interest in vacant SMR spectrum nationwide for the purpose of

building digital SMR systems there when there may be little market for these advanced services.

Fleet Call repeatedly touts the advantages of digital SMR technology -- greater capacity, improved transmission quality, increased privacy, enhanced calling features and improved data communications. However, these benefits are meaningless when there is little marketplace demand for them. As Fleet Call stresses in its Petition, digital SMR technology requires a weighty investment. There is some question, however, as to whether the projected return on an investment in these innovator blocks would make investing in the blocks worthwhile, since it would involve substantial sums of money in areas where there are smaller populations demanding less from mobile services.

While it might be possible that a portion of the so-called innovator blocks could be licensed in the largest secondary markets, or in those close to major markets, this goal could be better achieved by requiring applications, accompanied by rule waiver requests, to be filed by specific entities seeking larger channel blocks to implement more advanced systems. It would be an inefficient use of spectrum to restructure the SMR licensing rules to encourage investment in spectrum blocks in secondary markets nationwide when this investment may ultimately arise in only a portion of the areas contemplated, thereby precluding other potential uses of the spectrum in the unserved areas. Since there

are a large number of SMR channels available in this areas, it should not be difficult for entities to obtain licenses on enough channels to structure a "wide area" system.

Fleet Call does not provide sufficient justification that the vacant spectrum should even be targeted for encouragement of a seamless digital SMR network. There is no evidence of a need for a nationwide SMR service, nor more than a vague, cursory explanation of the nature of the services to be offered by a nationwide SMR network, which may be duplicative of many other services already offered or planned. While the FCC may encourage competition, it should not assume that any and every new service or spectrum use should be permitted simply because it is requested. Without a proper showing made of the uses, benefits and viability of the prospective permutation of the SMR service described by Fleet Call, the FCC should not contemplate Fleet Call's wholesale changes to SMR regulation.

As an alternative to its rulemaking proposal, Fleet Call could request revision of the rules it claims interfere with investors' ability and incentive to build digital systems in secondary markets, i.e., the 5-channel limit on initial SMR authorizations and the 40-mile restriction for co-owned SMR systems. Fleet Call's present proposal effects too broad a remedy by dedicating huge blocks of spectrum to single licensees in extended geographic areas. Moreover, Fleet Call is essentially requesting a

reallocation of the vacant SMR spectrum for a quasi-cellular service. Fleet Call should consider requesting changes on a smaller scale which directly address its concerns.¹

Congressional Auction Authority Should Not Be Requested

UTC opposes Fleet Call's request that the FCC seek Congressional auction authority to license the vacant SMR channels via a competitive bidding process. UTC objects to use of auctions both on a general basis and as part of this particular proposal. UTC objects generally to the use of auctions because they enable only those entities with the most resources to purchase spectrum, instead of spectrum being awarded on a public interest basis. Any authorization of competitive bidding without a blanket exemption for private, internal spectrum users will undermine the ability of businesses to use radio to enhance productivity and service to the public, and will hasten the fall of spectrum into only the "deep pocket" interests of the communications industry.

As noted above, Fleet Call has not justified a restructuring of spectrum, so an innovator block spectrum licensing scheme is not necessary. Should the FCC decide to make changes in the award of SMR spectrum, however, UTC urges it to choose means other than to

¹ UTC notes that other petitions for rulemaking are pending which would appear to afford the relief requested by Fleet Call without the massive restructuring and potential for inefficient spectrum usage proposed by Fleet Call. See "Petition For Rule Making" (RM-8030), filed May 26, 1992, by A&B Electronics, Inc. and "Petition For Rule Making" (RM-8029), filed March 13, 1992, by the National Association of Business and Educational Radio, Inc.

request auction authority. The issue of competitive bidding, if it is to be addressed by Congress, should not be addressed by applying auction authority to one service, then perhaps another. Instead, if Congress does examine the auction issue, it should do so on a comprehensive basis, considering as many auction-related issues as possible, such as the spectrum and types of services to which auctions would apply and any exemptions to be created. There are too many public policy issues to be addressed before it can be concluded that auctions would be appropriate for any particular service.

WHEREFORE, THE PREMISES CONSIDERED, the Utilities Telecommunications Council respectfully requests that the Federal Communications Commission deny the Petition For Rulemaking filed by Fleet Call, Inc.

Respectfully submitted,

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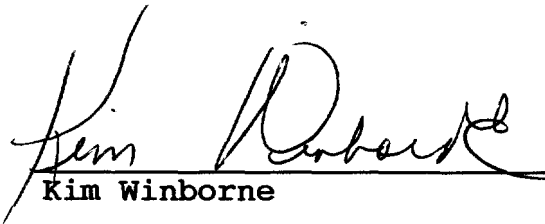
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Dated: July 17, 1992

CERTIFICATE OF SERVICE

I, Kim Winborne, a Secretary with the Utilities Telecommunications Council, hereby certify that I have, this 17th day of July 1992, mailed a copy of the foregoing "Opposition To Petition For Rulemaking" by first class mail, postage prepaid, to the following;

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